

2006

## State of Utah v. Todd Dixon : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, :  
Plaintiff/Appellee, :  
v. : Case No. 20060291-CA  
TODD DIXON, :  
Defendant/Appellant :  
:

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STATE OF APPELLEE  
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APPEAL FROM A CONVICTION ON ONE COUNT EACH OF  
THEFT, A SECOND DEGREE FELONY, IN VIOLATION  
OF UTAH CODE ANN. § 76-6-404 (WEST 2004), AND  
BURGLARY, A THIRD DEGREE FELONY, IN VIOLATION  
OF UTAH CODE ANN. § 76-6-202 (WEST 2004), IN  
THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR  
UTAH COUNTY, THE HONORABLE SAMUEL MCVEY,  
PRESIDING

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UTAH APPELLATE COURT  
APR 05 2007

IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, :  
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 Plaintiff/Appellee, :  
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 TODD DIXON, :  
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 Defendant/Appellant. :

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BRIEF OF APPELLEE

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, :  
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TODD DIXON, :  
Defendant/Appellant. :

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BRIEF OF APPELLEE

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JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a conviction on one count each of theft, a second degree felony, and burglary, a third degree felony, entered pursuant to State v. Sery, 758 P.2d 935 (Utah App. 1988) (R. 87-80, 90, 134). This court has jurisdiction over the appeal pursuant to Utah Code Ann. § 78-2a-3(2)(e) (West 2004).

STATEMENT OF THE ISSUE ON APPEAL AND

STANDARD OF APPELLATE REVIEW

Where defendant failed to carry his burden of demonstrating that the citizen who provided information to the officer was acting as a police informant, was the information the citizen provided presumptively reliable and sufficient to support the magistrate's probable cause determination?

In reviewing a magistrate's decision to issue a search warrant, the appellate court considers only whether the magistrate had "a substantial basis for his probable cause

determination." State v. Saddler, 2004 UT 105, ¶ 7, 104 P.3d 1265 (Utah App. 1993) (citation omitted). In doing so, the appellate court "must afford the magistrate great deference and consider the affidavit relied upon by the magistrate in its entirety and in a common [s]ense fashion." Id.

#### CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Const. amend. IV.

#### STATEMENT OF THE CASE

Defendant was charged by information with one count each of second-degree felony theft, third-degree felony theft, third-degree felony burglary, third-degree felony obstructing justice, and class-A-misdemeanor criminal mischief (R. 1-2). Prior to trial, defendant moved to quash the search warrant on which the information was based (R. 39, 40-47). The court denied the motion (R. 66). Defendant entered a conditional guilty plea to one count each of theft, a second degree felony, and burglary, a third degree felony (R. 80-87, 90, 134). The court sentenced defendant to one-to-fifteen years in prison on the theft count and one-to-five years in prison on the burglary count (R. 114). The court suspended both prison terms, ordered that defendant serve 210 days in the Utah County Jail, granted work release,



imposed various fines, and ordered that defendant serve thirty-six months on probation (R. 113-14). Defendant timely appealed from the trial court's denial of his motion to quash the search warrant (R. 120).

#### STATEMENT OF THE FACTS

Defendant admitted to the following facts at his change of plea hearing:

[O]n August 19th of 2004[,], the defendant . . . broke into the Tyack[e] Motors lot in Provo, took some keys and a Pontiac Sunfire.<sup>[1]</sup> He then stored . . . the car in his storage shed. Also on that same date [], he . . . broke into the 4K Cars building in Provo and took a cash box and some computer equipment, the value of which was over \$1,000.

(R. 134: 5).

This evidence was discovered in a search conducted pursuant to a warrant. The warrant was supported by an affidavit executed by Officer Trenton Halladay. See R. 142 at addendum A. The affidavit contained allegations made by a private citizen who had contacted the officer as well as Officer Halladay's corroborations of several of the citizen's statements:

1. The private citizen observed multiple items of property at defendant's address that the citizen asserted had been stolen. Id. at 1 (unnumbered pages). Officer Halladay confirmed that

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<sup>1</sup> The search warrant affidavit refers to the vehicle as a Pontiac "Sunbird." See R. 142 at 2. Presumably, both references are to the same vehicle.

defendant resided and paid utility bills at this address. Id. at 2.

2. The citizen turned over to the police a dealer license plate, numbered 2755024, which the citizen believed had been stolen from Tyacke Motors with the Pontiac. Id. at 1. The citizen reported that he removed the license plate from a large blue Powerade container in defendant's garage.<sup>2</sup> The officer independently corroborated that the dealer plate had been stolen from Tyacke Motors on August 19, 2004. Id.

3. In the same container, which had not been moved for at least six months, the citizen saw a second dealer license plate and 16 sets of car keys labeled "4K Cars." Id. at 1-2. In addition, the citizen reported personally seeing other stolen property, specifically computer equipment, including a fax machine and copier, at defendant's residence. Id. The officer independently corroborated that 4K Cars had also been burglarized on August 19, 2004, and that among the stolen items were computer equipment, a fax machine and a copier, 16 sets of car keys, and a dealer plate numbered 49460046. Id. at 2.

4. The citizen characterized as "very suspicious behavior" defendant's act of boarding up all entrances to his garage, including interior access doors, so that the only access was by

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<sup>2</sup> Although the State uses the masculine pronoun, the record does not disclose the citizen's gender.

remote control. Id. Officer Halladay did not independently confirm this allegation.

5. The citizen alleged that defendant had acted aggressively and had "pulled a machete[-]type sword" on him. The citizen alleged that defendant carried this sword concealed in his pant leg, and had access to shotguns as well as "numerous swords and knives in the home." Id. The citizen wished to remain anonymous "for fear of retaliation from [defendant]." <sup>3</sup> Officer Halladay conducted no investigation into these allegations.

6. The citizen also alleged that defendant occasionally used methamphetamine, and that he had personally observed drug paraphernalia in defendant's home. Id. Officer Halladay did not corroborate these allegations before seeking the warrant.

Based on this information, the magistrate found probable cause to issue a search warrant for defendant's home and garage (R. 143). In executing the warrant, police seized, among other things, a Pontiac Sunfire, computer equipment, sixteen sets of car keys, and Utah dealer plate 4946006 (R. 144).<sup>4</sup>

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<sup>3</sup> Officer Halladay confirmed the citizen's name, address, date of birth, and other personal information, but agreed to keep it confidential in order to protect the citizen. See R. 142: 3.

<sup>4</sup> The license plate taken from 4K Cars was described in the affidavit as "49460046", rather than "4946006" (R. 142: 2). The State assumes that the second number is correct because the maximum number of characters on a standard Utah license plate is seven. See <http://dmv.utah.gov/licensepersonalized.html>. Regardless, "[a]bsent evidence of an intentional material misrepresentation or omission in the affidavit, a warrant

Prior to trial, defendant moved to quash the search warrant (R. 39, 47-40). He argued that "the informant should have been treated as an interested confidential informant" because defendant had threatened the citizen with a sword and the citizen had access to defendant's property (R. 45, 43) (emphasis omitted).<sup>5</sup> Defendant also asserted that the officer's efforts at corroboration were insufficient because he looked only at "readily available public information" to confirm the citizen's allegations (R. 42-41).

The trial court determined that, even adopting defendant's assumptions for purposes of argument, the officer confirmed enough of the information provided to establish the citizen's reliability. See R. 67-68 at addendum B. Specifically, the court relied on the following assertions and confirmations in the search warrant affidavit: (1) the citizen turned over to the officer a license plate he had removed from defendant's residence and which he asserted had been stolen from a Provo car

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[should] not be invalidated. Any clerical errors in the affidavit with respect to the license plate number . . . were collateral and [should] not make the warrant facially invalid." McCall v. Peters, 2003 WL 21488211, \*7 (N.D. Texas 2003) (citing Franks v. Delaware, 438 U.S. 154, 155-56 (1978)).

<sup>5</sup> The citizen's ongoing access to defendant's residence fails to advance defendant's argument because, even assuming arguendo that the citizen was acting as a police informant, a citizen's permissive entry into another's home is not unlawful. State v. Koury, 824 P.2d 474, 478 (Utah App. 1991) ("It is not illegal for a private individual, even if acting as a government agent, to enter another's home if he or she does so with the owner's permission") (citation omitted)).

dealership; (2) the citizen asserted that another dealer license plate had been stolen from another Provo car dealership and was secreted in defendant's garage; (3) the officer corroborated both that defendant resided where the citizen alleged and that the two license plates had been stolen from the dealerships the citizen identified. See R. 67. Based on this information, the trial court determined that probable cause sufficed to issue the search warrant and, accordingly, denied defendant's motion to quash.

#### SUMMARY OF ARGUMENT

Defendant claims that the search warrant affidavit was insufficient to establish probable cause because the State based it on information from a confidential informant without independently establishing the informant's reliability. See Br. of Appt. at 7. This argument fails because defendant has not carried his burden of showing that the private citizen, whose identity the police knew but did not reveal in the affidavit, was acting as a police informant, rather than as a citizen informant. Indeed, nothing in the record supports such an assertion.

Because information that a citizen provides is presumptively truthful, the police need not corroborate it. Therefore, the magistrate properly considered both corroborated and uncorroborated information provided by the citizen. This information provided a substantial basis for the magistrate's determination that there was a fair probability that evidence of crime would be found at defendant's residence.

### ARGUMENT

DEFENDANT HAS NOT CARRIED HIS  
BURDEN OF DEMONSTRATING THAT THE  
CITIZEN WAS ACTING AS A POLICE  
INFORMANT; CONSEQUENTLY, THE  
INFORMATION HE PROVIDED WAS  
PRESUMPTIVELY RELIABLE AND  
SUFFICIENT TO ESTABLISH PROBABLE  
CAUSE

Defendant claims that the search warrant was "not supported by probable cause" because "the information relied on by the officer came . . . from a confidential informant . . . whose information must be corroborated by independent investigation and verification." Br. of Aplt. at 7. Defendant's argument is based on the premise that the individual who gave the police the information contained in the affidavit was a "confidential informant" rather than a "citizen informant." Id. Consequently, he argues, the information was so inherently lacking in reliability that it required police corroboration. Id. Defendant's claim fails because he has not carried his burden of showing that the citizen was acting as a source requiring corroboration.

At the outset, defendant characterizes the informant as a "confidential informant" rather than a "citizen informant."<sup>6</sup>

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<sup>6</sup> The informant was "confidential" in that the informant requested that his identity be withheld from the affidavit. See R. 142: 1 at addendum A. Officer Halladay, however, knew the informant's name, address, date of birth, and other personal information. See id. at 1, 3. This is typical of confidential police informants who work under cover. See, e.g. State v. White, 851 P.2d 1195, 1199 (Utah App. 1993) (distinguishing confidential citizen informants from confidential police

Information provided by confidential informants, also called police informants, is not considered on par with information provided by citizen informants. That is, information concerning criminal activity coming from a private citizen is presumed truthful. Id. In most cases, "an ordinary citizen-informant needs no independent proof of reliability or veracity." State v. Deluna, 2001 UT App 401, ¶ 14, 40 P.3d 1136 (citations omitted); accord State v. White, 851 P.2d 1195, 1199 (Utah App. 1003). Officers can "simply assume veracity when a citizen-informant provides information as a victim or witness of crime." Deluna, 2001 UT App 401 at ¶ 14.

In contrast, the same information from an individual who is acting as a police informant falls "lower on the reliability scale." State v. Dable, 2003 UT App 389, ¶ 11, 81 P.3d 783 (citation omitted). Information from a police informant must be corroborated by independent police investigation. State v. Saddler, 2004 UT 105, ¶ 22, 104 P.3d 1265.

To determine whether an individual conducting a search is acting as an agent of the government and is thus a police informant, or is acting as a private individual and is thus a citizen informant, Utah courts conduct two inquiries. State v. Watts, 750 P.2d 1219, 1221-22 (Utah 1988). First, courts look at whether the government knew of or acquiesced in the search.

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informants.) A citizen informant, of course, may also request that his identity be protected.

State v. Koury, 824 P.2d 474, 477 (Utah App. 1991). Second, considering the individual's intent and purpose, courts analyze whether the citizen was acting in his "own interest or to further law enforcement." Id. (citation omitted). Courts consider such factors as "whether there was an ongoing relationship between the informant and police, whether the informant was rewarded for his efforts, and whether police gave the informant any direction or guidance." Id. (citation omitted).

Because "the party objecting to the evidence has the burden of establishing the agency relationship," the burden of establishing that the informant was acting as an agent of the government falls to defendant. Id. (citing Watts, 750 P.2d at 1221). Defendant wholly fails to carry this burden. Indeed, he has cited no record evidence pertinent to either of the controlling inquiries, much less engaged in any meaningful legal analysis. Because his briefing is inadequate, this Court may summarily decline to consider his claim. See, e.g., Utah R. App. P. 24(a)(9) (requiring an appellant's argument to include citations to the authorities, statutes, and parts of the record relied on); State v. Thomas, 961 P.2d 299, 305 (Utah 1998) (stating that rule 24(a)(9) requires an argument to contain reasoned analysis based on legal authority).

Even on the merits, defendant's claim that the informant was acting as an agent of the police fails. First, as to whether the government knew of or acquiesced in the informant's search, the



affidavit plainly attests that the informant sua sponte contacted the police after he had observed the stolen property at defendant's residence. R. 142: 1. There is no evidence that the police knew of or acquiesced in the informant's activities preceding his contact with the police. Indeed, there is no evidence that the police even knew the informant's identity before he initiated contact with them. And, plainly, the police could not have given the informant any guidance or direction because the police did not know anything about the informant until after he surveyed defendant's residence and then contacted them.

Second, as to whether the informant acted in his own interest or to further law enforcement, police offered the informant no personal benefit in exchange for the information he volunteered. There is no evidence he was compensated or rewarded in any way. It could, perhaps, be argued that the citizen received the personal satisfaction of seeing defendant apprehended, given the citizen's statement to the officer that defendant had recently "pulled a machete-type sword" on him (R. 142: 2). Such secondary satisfaction, however, does not render the citizen an agent of police action where he was not rewarded or compensated by the police in any way. See State v. Purser, 828 P.2d 515, 517 (Utah App. 1992) ("[R]eliability and veracity are generally assumed when the informant is a citizen who receives nothing from the police in exchange for the

information") (emphasis added). Thus, even if this Court chooses to reach defendant's claim, it fails on the merits because nothing in the record establishes that the informant acted as a police agent.

Under these circumstances, where the informant was acting not as an agent of the police but as a citizen, the information he provided was presumptively reliable and the officer had no need to independently corroborate it.<sup>7</sup> White, 851 P.2d at 1199.

Because the informant was acting in his individual capacity as a citizen, the magistrate could properly consider both his corroborated and uncorroborated statements contained in the affidavit in assessing probable cause.<sup>8</sup> The following relevant information could thus be considered:

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<sup>7</sup> Nonetheless, several factors bolster the citizen informant's reliability. For example, after initiating contact with the police, the citizen met face-to-face with Officer Halladay and revealed his personal information, including name, address, and birth date. R. 142: 1, 3. This sharing of personal information bolstered the citizen-informant presumption of reliability because if the information proved to be false, the citizen would be subjecting himself "to a penalty for providing false information" to police. Deluna, 2001 UT App 401, ¶ 15. Also, the informant told police that he did not want his identity made public for fear of retaliation from defendant. R. 142: 1. The fear of retaliation "provide[d] the informant with a strong motivation not to lie." Deluna, 2001 UT App 401, ¶ 15 (citation omitted).

<sup>8</sup> The trial court, assuming *arguendo* a need to establish the informant's reliability, correctly determined that the independently corroborated assertions alone sufficed to support probable cause and the issuance of the warrant. See R. 65-70 at addendum B. The court could, however, have considered the totality of the information provided, given that the informant was acting in his individual capacity as a citizen.

1. The citizen personally observed specific items of property that he believed to be stolen at defendant's residence. The officer confirmed that defendant lived at the specified address and that he paid the utilities at that address.<sup>9</sup> R. 142: 1-2.

2. The citizen gave the police a dealer license plate that the citizen had removed from defendant's garage and which the citizen believed had been stolen from Tyacke Motors. The officer confirmed that the dealer plate had been stolen from Tyacke Motors on August 19, 2004. Id.

3. The citizen personally observed stolen property, specifically a second dealer license plate, 16 sets of car keys labeled "4K Cars," and computer equipment, including a fax machine and a copier, at defendant's residence. The officer confirmed that 4K Cars had also been burglarized on August 19, 2004 and that among the stolen items were a dealer license plate, 16 sets of car keys, and computer equipment, including a fax machine and copier. Id. at 2.

4. The citizen observed that defendant had boarded up interior access doors to the garage, thus suspiciously limiting entry to his garage to use of a remote control garage door opener. Id.

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<sup>9</sup> Defendant complains that the officer relied on "readily available public information" for corroboration, but fails to cite any cases to support the inference that this was somehow improper or inadequate. See Br. of Aplt. at 11. This is one more way in which defendant's briefing is inadequate.

5. The citizen reported that defendant aggressively "pulled a machete[-]type sword" on him, often carried a concealed sword in his pant leg, and had numerous weapons in his home. Id.

6. The citizen personally observed drug paraphernalia in defendant's home. Id.

In determining whether this information was sufficient to establish probable cause, the magistrate had to look at the totality of the circumstances, evaluating them in a practical and non-technical way. Illinois v. Gates, 462 U.S. 213, 230-31 (1983) (citing Brinegar v. United States 338 U.S. 160, 176 (1949)). This Court gives "great deference" to the magistrate's determination. Id. at 236.

Here, the information creating the nexus between defendant's residence and the stolen property came from a reliable citizen informant who approached the police with specific information about itemized stolen property, including turning over to the police a stolen dealer license plate taken from the residence. The officer independently confirmed that the allegedly stolen items had been reported stolen from two car dealerships. The number of car keys the dealership reported stolen matched the number of car keys the informant reported personally seeing at defendant's home. The computer equipment the dealership reported stolen matched the equipment the informant reported personally seeing at defendant's residence. And the second license plate that the dealership reported stolen matched the number of the

remaining dealer license plate the informant reported personally seeing at defendant's residence.

Moreover, the citizen asserted that defendant unlawfully possessed drug paraphernalia. The informant's accuracy about the 16 sets of car keys, the two dealer license plates, and the computer equipment increased the credibility of his assertion that defendant also possessed drug paraphernalia. See Gates, 462 U.S. at 244 ("Because an informant is right about some things, he is more probably right about other facts.") (quoting Spinelli v. United States, 393 U.S. 410, 427 (1969)). When the totality of this information is viewed in a "practical, common sense" fashion, "given all the circumstances set forth in the affidavit," it constituted "a fair probability that . . . evidence of a crime w[ould] be found [at defendant's residence]." Gates, 462 U.S. at 238. No more is necessary to sustain the issuance of the warrant.

#### CONCLUSION

For the reasons stated, this Court should affirm defendant's conviction on one count each of theft, a second degree felony, and burglary, a third degree felony.

RESPECTFULLY submitted this 4<sup>th</sup> day of April, 2007.

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CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing brief of appellee were mailed first-class, postage prepaid, to Margaret P. Lindsay and Julia Thomas, 99 East Center Street, P.O. Box 1895, Orem, Utah 84059-1395, this 4<sup>th</sup> day of April, 2007.

Joanne C. Slotnick

## Addenda

## Addendum A



FILED IN  
4TH DISTRICT COURT  
STATE OF UTAH  
UTAH COUNTY

FOURTH CIRCUIT COURT, STATE OF UTAH  
UTAH COUNTY

04 NOV -4 AM 9:29

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STATE OF UTAH :  
Plaintiff, : AFFIDAVIT IN SUPPORT OF  
-vs- : A SEARCH WARRANT  
CRIMINAL INVESTIGATION : Criminal No.  
964 North 700 East  
Springville, Utah

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STATE OF UTAH )  
:ss.  
COUNTY OF UTAH )

Comes now Trenton Halladay, having been duly sworn, who deposes and states as follows:

1. That your affiant is currently assigned to the Uniform Patrol division with the city of Provo, Utah. That your affiant attended the Utah State Police Academy where your affiant received training in all aspects of the Utah State Criminal Code. That your affiant has been a police officer for the city of Provo since 1995. During this time your affiant has received training through the Utah Narcotics Officers Association. Through this training and through the Provo Police Department I have routinely investigated violations of the Utah State Criminal Code 58-37-8, more Specifically identification, use/distribution methods of controlled substances, informant management, controlled buys, investigations and recovery of stolen property and other covert methods of investigating alleged criminal activities.
2. That your Affiant was contacted by a citizen informant within the last 72 hours concerning illegal activity which the informant observed occurring at the address of 964 North 700 East, Springville, Utah. That this citizen informant has personal knowledge that Todd Dixon, DOB 04-29-64, is involved in criminal activity and is possession of stolen property. That this citizen informant saw the property at the residence of Todd Dixon at 964 North 700 East, Springville, Utah. That this citizen informant wants to remain anonymous for fear of retaliation from Todd Dixon. That your affiant knows the correct name of the citizen informant and that your affiant has the current address for the informant.
3. That on 10-06-04 you affiant met with the citizen informant. That the citizen informant told your affiant that they had recovered a license plate from the residence of 964 North 700 East, Springville, Utah. That the citizen informant believed that this license plate was stolen during a burglary in Provo at Tyacke Motors. That the citizen informant gave the license plate to your affiant. That your affiant ran a statewide check on the dealer license plate and found that the plate was stolen out of Provo City on 08-19-04 from Tyacke Motors. That the citizen informant said that there was another license plate along with other stolen property that belonged to 4K Cars also out of Provo. That the citizen informant talked to the owners of both of these businesses and confirmed that they had been burglarized. That your affiant ran a check through our Records Department and found that these burglaries occurred on 08-19-04.

4. That the citizen informant told your affiant that they know a Pontiac Sunbird along with the dealer plate of 2755024 was stolen from Tyacke Motors. That the citizen informant also told your affiant that they witnessed computer equipment to include; a fax machine and copier in this above mentioned vehicle approximately 3 weeks ago at the residence at 964 N. 700 E. Springville Utah. That your affiant confirmed through the Provo Records Department that there were two burglaries that did occur on 08-19-04 and that the burglary that occurred at 4K Cars on 970 S. State in Provo involved the theft of computer equipment, fax machine and a copier as well as 16 sets of car keys and a dealer license plate, this being license plate number 49460046.
5. That the citizen informant told your affiant that on 09-28-04 this citizen informant was in the residence of 964 North 700 East, Springville, Utah. That while at the residence of 964 North 700 East, Springville, Utah, observed in the garage portion of the residence a blue Powerade water container. That the citizen informant looked inside the container and saw two dealer license plates, one numbered 2755024 and the other with 49460046 and a stash of car keys that had the name of 4k Cars on these keys. That the citizen informant took the keys out and wrote down the cars that these keys belonged to and then put the keys back into the container. That there were approximately 16 sets of keys. That the citizen informant took one of the dealer plates from the container, that being 2755024, for the purpose of showing it to police.
6. That this citizen informant has had access to the residence at 964 N. 700 E. Springville, Utah for the last six months and continues to have access to the residence. The citizen informant told your affiant that the blue Powerade water container has not moved for the last six months. That the citizen informant told your affiant that Todd Dixon has been exhibiting very suspicious behavior to include; boarding up his garage to prevent access to any outsiders to the extent that he has even boarded up the interior access doors and the garage may only be accessed via remote control. That the citizen informant told your affiant that Todd Dixon does have a storage unit at the Bird Storage Units located at 1940 S. State, #A21, Springville, Utah. That the citizen informant believes that the stolen Sunbird may possibly be hidden in that storage unit.
7. That the citizen informant told your affiant that sometime during the last two weeks the citizen informant and Todd Dixon were in a confrontation and that Todd Dixon pulled a machete type sword on the citizen informant. That the citizen informant stated that Todd Dixon sometimes carries this weapon on his leg concealed. That the citizen informant also told your affiant that Todd Dixon has access to shot guns that are in the home, but are locked up. That the citizen informant also told your affiant that there are numerous swords and knives in the home. That the citizen informant also told your affiant that Todd Dixon uses meth on an occasional basis. That the citizen informant told your affiant that during the last three weeks the citizen informant has observed drug paraphernalia in the residence of 964 N. 700 E. Springville, Utah.
8. That your affiant performed an independent investigation and through the assistance of the Springville Police Department your affiant did confirm that your Todd Dixon does reside at the address of 964 N. 700 E. in Springville. That your affiant confirmed through Springville City utilities that the utilities are in Todd Dixon's name.

9. That failure to search the residence listed above as well as the curtilage out buildings and other structures affiliated with 964 North 700 East, Springville, Utah, will allow for these items to be secreted, destroyed, altered or otherwise moved from the residence of 964 N. 700 E. Springville, Utah.
10. That the residence is described as a single family dwelling. That the residence is constructed of brown brick, tan stucco, and an off white stucco. That the front door faces west onto 700 E. and that the door is white in color. That the numbers 964 appear to the left of the door in gold letters. That the garage door is on the north side of the house of the residence facing 700 E. as well.

**Wherefore**, your affiant requests that a warrant be issued for the search of the residence located at 964 North 700 East Springville, Utah, the curtilage and surrounding area, any assigned storage area, persons and vehicles of individuals present at the residence of 964 North 700 East Springville, Utah, during the day time hours, for stolen property, to include; computer equipment, a fax machine, a copy machine and any other computer equipment that maybe related to these burglaries, stolen license plates and stolen car keys, drug paraphernalia, controlled substances, and any document showing occupancy to any storage units.

Dated this 7<sup>TH</sup> day of October, 2004 <sup>200 P</sup>~~12 P~~.M.

Trenton Halladay  
AFFIANT-Trenton Halladay

Subscribed and sworn before me on the 7<sup>TH</sup> day of October 2004, 2:00 P.M.

(reviewed & authorized)

[Signature]  
MAGISTRATE



11. THAT THIS Confidential citizen informant has provided to your affiant Their address, name, Date of birth & personal Information That your affiant has been able to confirm.
12. THAT THE IDENTITIES OF THE PROPERTY TAKEN IN THE BURGLARIES ARE ATTACHED WITH THE CORRESPONDING POLICE REPORTS FROM PROVO CITY POLICE.

## Addendum B

4-20-05

**FAXED**  
4-22-05

See  
Go Atty  
Public Def

**IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH**

<b>STATE OF UTAH,</b>  Plaintiff,  vs.  <b>TODD DEGRAY DIXON,</b>  Defendant.	<b>RULING &amp; ORDER ON DEFENDANT'S MOTION TO QUASH SEARCH WARRANT</b>  Case No. 041404092  Judge Samuel D. McVey
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This matter comes before the Court on the Defendant's Motion to Quash Search Warrant. Having carefully considered and reviewed the file in this matter, the memoranda submitted by the parties, and good cause appearing therefor, the Court now hereby makes the following Ruling and Order.

**I  
PROCEDURAL POSTURE**

1. On March 4, 2005, the Defendant filed his Motion to Quash Search Warrant.
2. On April 12, 2005, the Court conducted an Evidentiary Hearing where the State filed its Response to Defendant's Motion to Quash. At that time, counsel submitted the Motion for Ruling upon the briefs.

## II STATEMENT OF FACTS

The material facts are largely agreed upon and cited by both parties in their briefing.

## III ANALYSIS & RULING

“Utah applies the totality-of-the-circumstances analysis when determining whether an affidavit sets forth facts sufficient to establish probable cause under the Fourth Amendment. The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of the reviewing court is simply to ensure that the magistrate had a ‘substantial basis for...concluding’ that probable cause existed.” State v. Singleton, 854 P.2d 1017 (Utah App. 1993) (citations omitted); see also Illinois v. Gates, 462 U.S. 213, 238 (1983). Hence, veracity, reliability, and basis of knowledge of an informant are relevant considerations, *inter alia*, to be weighed by a court in determining the existence of probable cause under the totality-of-the-circumstances standard. State v. Saddler, 104 P.3d 1265, 1268-9 (Utah 2004).

Utah courts have held that “the average neighbor witness [i.e. ‘citizen informant’] is not the type of informant in need of independent proof of reliability or veracity.” State v. White, 851 P.2d 1195, 1199 (Utah App. 1993) (citations omitted). Rather “[v]eracity is generally assumed when the information comes from an ‘average citizen who is in position to supply information by virtue of

having been a crime victim or witness.” Id. On the other hand, an informant “who gains information through criminal activity or who is ‘motivated...by pecuniary gain’ is lower on the reliability scale than a citizen informant.” State v. Dable, 81 P.3d 783, 787 (Utah App. 2003) (citations omitted).

In addition, such information should be corroborated, which “means, in light of the circumstances, [the officer] confirms enough facts so that he may reasonably conclude the information provided is reliable.” Id. at 789. Moreover, an officer “may rely upon information received through an informant, rather than upon his direct observations, so long as the informant’s statement is reasonably corroborated by other matters within the officer’s knowledge.” Gates, 462 U.S. at 242.

In making such determinations of veracity and reliability of an informant’s information, the magistrate’s conclusions are granted a wide degree of deference and latitude. White, 851 P.2d at 1198. Reviewing courts “will find the warrant invalid only if the magistrate, given the totality of the circumstances, lacked a ‘substantial basis’ for determining that probable cause existed.” State v. Thurman, 846 P.2d 1256 (Utah 1993) (citations omitted).

The Defendant argues that the search warrant issued by the Honorable Lynn W. Davis was not supported by probable cause because 1) the affidavit in support of the search warrant falsely referred to the informant as a “citizen informant” instead of an “interested confidential informant” and 2) the affiant officer did not independently corroborate the information that formed the probable cause found by Judge Davis.

Assuming for the sake of argument that the Court adopts these assertions, the Court still finds that Judge Davis had a substantial basis to find that the officer’s affidavit sets forth facts sufficient

to establish probable cause under the Fourth Amendment. However, the Defendant argues that the “nonspecific, general statements in the affidavit and [the officer’s] lackluster effort to corroborate any relevant information failed to establish probable cause for the court to authorize the warrant.” Defendant’s Memorandum in Support of Motion to Quash, p. 7. To the contrary, the affidavit states the following, *inter alia*:

- a. The informant had given the officer a license plate that had been stolen from a Provo business and was found at the Defendant’s residence.
- b. The informant had contacted the Provo-based business and had confirmed that the license plate had indeed been stolen.
- c. The informant had contacted another Provo-based business and had confirmed that another license plate, which he had seen at the Defendant’s residence, had been stolen.
- d. The officer subsequently contacted both Provo-based businesses and had **confirmed** the informant’s assertion that the license plates were stolen from them.
- e. The officer **confirmed** the location of the Defendant’s residence, including the fact that the city utilities were in the Defendant’s name.

Accordingly, the officer confirmed enough facts to reasonably conclude the information provided by the informant was reliable.

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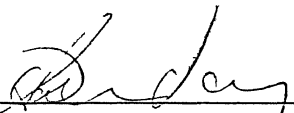


**IV  
ORDER**

On the grounds and for the reasons set forth herein, IT IS HEREBY ORDERED,  
ADJUDGED, AND DECREED that:

1. The Defendant's Motion to Quash Search Warrant is denied.

Signed this 4 day of April, 2005.

  
\_\_\_\_\_  
Judge Samuel D. McVey  
Fourth District Court Judge

## CERTIFICATE OF SERVICE

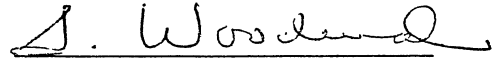
I hereby certify that I delivered a true and correct copy of the foregoing **RULING & ORDER**

**ON DEFENDANT'S MOTION TO QUASH SEARCH WARRANT** to the following on the

20<sup>th</sup> day of April, 2005:

Sherry Ragan  
Utah County Attorney

Richard Gale  
Utah County Public Defender

  
Clerk